

CHAPTER III

DUTIES IN GENERAL

The purpose of this chapter is to briefly mention the duties in general that are required of the clerk. The performance of these duties must be exercised in accordance with the statutes that impose such duties or by lawful authority of the court.

It is impossible to outline or enumerate in detail each particular duty and to explain how it should be done. It is the intent to attempt to create a line of thought that will impress the clerk of the important and varied requirements for the performance of duties. If this line of thought is effective upon the impressionable mind, the official will realize that the information source of instruction must be obtained from the statutes. It will be imperative to make a comprehensive study and the application thereof for an efficient and successful administration.

Every elected official has, sometime during their candidacy, pledged to the electorate that if elected he would perform the duties of the office in an honest, courteous, efficient and impartial manner as required by law; that he or she is qualified to assume the duties imposed by law, and if elected he or she will administer the duties of the office accordingly.

The election is accomplished and for the first time the newly elected clerk realizes he or she is not qualified by previous training or experience for this particular type of work. The succession to the office is, usually, from another field of employment, trade or profession. Suddenly the clerk realizes that past experience has not furnished the necessary training and knowledge to immediately allow entering this new position of trust and administration of duties with a thorough knowledge of procedure.

The average clerk realizes and expresses to them self the acknowledgment of their own limitations. If the clerk is desirous of serving his or her constituents well and is ambitious enough to fulfill all campaign pledges for an efficient administration -- they will immediately enroll in the appropriate training school. The clerk will adopt as textbook the accepted volumes of authority containing all laws pertaining to the duties of the office. A thorough study will be made of the office. The clerk will become familiar with the general provisions thereof. The clerk will confer with the judge of the court and will seek counsel from members of the legal profession. There will need to be cooperation with all interested parties and other officials. By initiative and application the clerk will attempt to organize and systematize the office so that the functional duties will result in a successful administration.

The clerk must not proceed entirely on the theory that "it has always been done that way" or "they never did it that way before." It is well to review the work of your predecessor, but perhaps the predecessor was not always correct. If there is some doubt as to the correct procedure, refer to that section of the law that pertains to the question or problem involved. Be sure you are correct then proceed accordingly. Acquaint yourself with the office and keep informed with everything that goes on in your presence or in your absence. Employ competent deputies or assistants for their honesty, efficiency and performance. Do not let the prerequisite for employment rest alone on the productiveness of political activity. Deputies may take the same oath of office and assume like obligations as the clerk. They should have the desire to perform their duties as well and should possess a personal loyalty to the clerk. Be able to instruct them the way the office should be conducted. You are responsible for their acts. You will receive the credit for or criticism of their performance.

Be impartial in your treatment with opposing lawyers and litigants in causes of action. Assist them in furnishing information concerning papers filed or records made in the pending cause. If a request is made to read complaints or records, extend the courtesy if authorized by law. Never argue with a lawyer upon the legality of filing complaints or question allegations in complaints. The clerk is not the court and it is not your responsibility if the lawyer errs. That is a matter for the court to decide.

There should be the utmost cooperation between the judge and the clerk. Each is an elected official and is charged by law to perform specific duties. The clerk must operate the office of clerk and the judge must operate the court. Neither official should attempt to dictate the duties of each other. Both officials should be agreeable at all times and a cooperative relationship should exist.

The clerk is charged to keep the Record of Judgments and Orders (RJO) of the court and to enter all record, orders, and judgments as the court may direct. The RJO of the court is the record of the court and the clerk is merely the scribe. It is never advisable for the clerk to question the validity of a judgment or order of the court or to inquire into the reason for his so doing.

As in the early days of the court in England where all forms of learning were assumed to be possessed by the clerk -- so will it be your experience to find that, as clerk, you will be called upon for much information. From the day you assume office people will think that you are the source of all information, legal and otherwise, and that you will be able to solve their problems. The public is very exacting in its demand from public officials. Be particularly cautious in imparting information or giving advice. You will be consulted on questions involving controversial legal matters and it is not within your duty to advise any one legally. Your interpretation of the law may be incorrect and your answer may perhaps cause embarrassment to you as a result of an innocent desire to render assistance. Such persons seeking legal information should consult an attorney. The clerk is prohibited from practicing law. It will be to your advantage to eliminate all unnecessary involvements.

Indiana law requires the clerk to perform many varied duties. The clerk is required to be the clerk of the circuit court; clerk of the probate court; clerk of the superior court and county courts in counties where such courts are created; clerk of the criminal court; clerk of the juvenile court; clerk of the magistrate court where such courts are created, and in Marion County, clerk of the Marion County municipal court. The clerk is ex-officio a member of the county board of elections and board of canvassers; chief registration officer in charge of voters registration in counties having a population of less than 125,000; a member of county commission of public records, and jury commissioners.

The clerk must procure at the expense of the county all entry dockets, issue dockets, execution dockets, bench dockets, registers, bond and inventory records, cash book of receipts and disbursements, miscellaneous license forms and records, and any other forms and records necessary for the filing, indexing, recording and processing of all matters required by law to be filed or entered of record.

The clerk is required to attend, in person or by deputy, all sessions of the court and to record such minutes or proceedings as required by law on order of the court. It is the duty of the clerk to swear all witnesses in causes or hearings on trial before the court or jury, to swear the jurors and bailiffs in charge of the jury, to receive and read the verdict returned by them and to read affidavits or indictments to defendants when arraigned in criminal causes.

There are some exceptions to those requirements if the judge does not insist on the presence of the clerk at all times. Many judges assume the responsibility of administering oaths and swearing parties appearing in hearings or trials. Most judges employ a reporter to record the proceedings of the court; but it still remains the duty of the clerk to transcribe these proceedings into formal entries and enter them in the order book of the court. It is also a common practice for prosecuting attorneys to read the affidavits or indictments when defendants are arraigned. However, if the court, or judge thereof, requires the presence of the clerk, it is a part of the clerk's official duty and must be complied with.

All courts orders, warrants, writs, process and other papers must be issued by the clerk upon order of the judge.

The commencement of all actions, whether they be civil, criminal, probate, trusts, juvenile or any other actions must have their beginning by being filed, entered of record and indexed in the proper entry dockets. The issuance of letters in probate matters and trusts, the giving of legal notices in connection therewith, or notices in any other actions, when required by law, and performing all duties incidental thereto is a part of the clerk's duties. All inventories, reports, bonds, orders and all other proceedings incidental to the termination of estates, trusts, or any other kind of actions must be entered of record as provided by law.

The clerk is the official custodian of all court records including the seal of the court. The seal is only used when affixed to documents that contain the signature of the clerk and judge. If it is necessary for the judge to make acknowledgments on documents, the clerk should attest the signature of the judge and affix the seal thereto.

All transcripts of judgments received from other courts, to become a lien on real estate, must be entered by the clerk in the judgment docket and the transcript of the judgment shall be recorded in a record provided for that purpose.

All bonds which are required by law to be filed, approved or recorded by the clerk must be entered of record and indexed in a book provided for that purpose.

Executions, decrees and orders of sale, and fee bills must be issued by the clerk when ordered to do so by the parties obtaining the judgment, and then only upon the signing of a praecipe by the parties or the attorney of record.

The clerk is required to prepare transcripts in cases venued from the county and to prepare transcripts of proceedings in causes being appealed to a higher court.

The clerk is required to handle all applications for admissions to the state owned or operated psychiatric hospitals, the Fort Wayne Developmental Center and Muscatatuck State Developmental Center, and to issue commitments thereto upon order of the court. The clerk is required to provide for the care of the mentally ill person pending admission to a psychiatric hospital after order of commitment is issued by the judge, and until the person is admitted to the institution.

All applicants for notary public shall secure an official bond with freehold or corporate security, to be approved by the secretary of state in the sum of five thousand dollars (\$5,000.00). The official bond shall be conditioned upon the faithful performance and discharge of the duties of the office of notary public. [IC 33-42-2-1]

Applications for marriage licenses and the issuance thereof is a required duty of the clerk. All marriage licenses shall be entered and indexed in a record providing for that purpose. Applications should be entered in order as received.

A monthly financial report as at the close of business on the last day of the preceding month must be prepared not later than the twenty-fifth day of the succeeding month. It is to be prepared in quadruplicate and the three copies filed with the county auditor. [IC 33-32-3-6]

Each person commissioned by the governor as a railroad policeman shall file such commission and oath with the clerk of the circuit court of the county in which said policeman resides. The clerk shall record such oath and commission in the proper records.

The clerk is charged with the duty of making an honest effort to collect all court costs. There is a general provision for the issuance of fee bills for clerk's and sheriff's costs within seventy-five (75) days after judgment is entered. Clerks are authorized to issue fee bills against either the plaintiff or defendant for the collection of costs due. [IC 33-37-4-10]

It is the duty of the clerk to furnish copies of record and to certify to the correctness thereto when required by law or requested by interested parties. The fees in connection therewith shall be the property of the county. Copies of records for use by the Veterans Administration shall be issued without cost.

The General Assembly has enacted various laws governing the duties required of the clerk in the matter of elections and registration of voters. The state election board has published a manual of all election laws, rulings and opinions, for the guidance of all officials charged with election duties. All information concerning the duties of the clerks are incorporated in this publication and eliminates the necessity for any further discussion in this manual.

All support money must be received by the clerk from the party ordered to make such payment and the clerk must disburse a like amount to the party entitled to receive it.

The purpose of support money is for the care and maintenance of a child, or children, or needy parents.

The clerk should not delay disbursing support money unless ordered by the court.

If the clerk is an authorized representative of the Fish and Game Division of the Department of Natural Resources, the clerk is responsible for the issuance of all types of hunting and fishing licenses. The clerk is responsible on his or her bond for proper accounts of all money collected and all licenses charged to him or her. [IC 14-22-11-3]

A quarterly report and remittance of all license fees collected during the preceding month is to be made in accordance with the rules and regulations of the Department of Natural Resources. [IC 14-22-12-9]

Until July 1, 2005, each clerk of the circuit court who is a duly authorized representative of the state department for the sale of hunting and fishing licenses may designate sub-agents in the respective county to sell licenses. The sub-agent in every case shall execute a bond payable to the State of Indiana in an amount not less than five thousand dollars (\$5,000.00), but large enough to cover the value of licenses distributed to the sub-agent and with such surety as shall be approved by the clerk, conditioned on the proper selling of the licenses and proper accounting for all monies due to the state. [IC 14-22-12-10; this section is repealed July 1, 2005]

When approving the bond the clerk is approving the surety thereon as well as the amount and the term for which it is to run.

All such bonds should expire December 31 of the year for which the licenses are issued. If an agent is appointed in December to issue licenses for the calendar year following, the bond is to be written for a period of one year beginning January 1 and expiring December 31. If an agent is appointed after January 1 to serve for a part of the year, the bond must be written for the period beginning with the date of appointment and to expire December 31. No bond is to be written with the expiration date overlapping into the following year.

The premium for the bond to be paid by the agent is for a calendar year or any part thereof. The bond must be payable to the State of Indiana the same as any other public officials' bond.

Although sub-agents may be reappointed each year, a new bond must be executed annually. [IC 14-22-12-10; this section is repealed July 1, 2005]

It is the duty of the clerk to certify judgments in quiet title and partition suits to the county recorder and county auditor, and to tax recorder's fees therefor as a part of the costs of the proceedings.

When property is sold at a sheriff's sale pursuant to a decree and order of sale growing out of a judgment in foreclosure, it becomes the duty of the clerk to release such mortgage in the recorder's office if the record shows the whole debt secured by such mortgage has been paid.

Clerks are required to attend an annual conference when called by the State Board of Accounts. Such conference shall be for the purpose of instructions in the proper use of prescribed forms, keeping of records and for other purposes which will result in the better conduct of public business. [IC 5-11-14-1]

The clerk is required to file and enter into the judgment docket, as other judgments are entered, all warrants received from the Indiana Department of Revenue for the collection of delinquent income tax and sales tax covered by the warrants. The clerk is also required to file and enter in the judgment docket all warrants received from the Department of Workforce Development for delinquent unemployment compensation tax.

The clerk shall keep a cash book for receipts and disbursements, and all other records prescribed by the State Board of Accounts, for a strict accounting of all money received and disbursed by the clerk. All money must be deposited in a depository, designated by the county board of finance, not later than the first business day after it is received by the clerk.

The clerk shall also keep a register of fees and funds held in trust for all persons which shall be entered as soon as received. The names shall be listed alphabetically, showing the cause number, the record reference where taxed, the amount so paid, date when paid into the clerk's hands and when disbursed. The clerk should never let items of trust accumulate. They should be disbursed to the person or persons entitled to receive them with reasonable promptness.

Items of trust should always be entered for the benefit of the person, firm or unit of government by name. Such items should never be entered as "Cash," "Cash Bond," "Appraiser's Award," "State of Indiana," "Cash -- Change of Venue," "Cash of Unknown Heirs," "Cash to be Held," "Inheritance Tax Appraiser," "Old Check Receipted Back" or similar misnomers.

All records, books and papers belonging to the office and all money held by the clerk must be delivered to the clerk's successor at the expiration of the clerk's term.

In the discussion thus far we have not attempted to enumerate every duty the clerk is required to perform. Neither have we explained how to perform these duties or why they should be done. We have attempted to impress the clerk that the duties are many and varied. There is a great store of information contained within the recommended textbook -- the statutes containing the laws that create and govern the duties of the clerk.